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GA 1038 Hc

88/(Jail)
J. C. R.-2000-6-88

Division Bench (Criminal)

APPEAL OF PRISONER

No. 5216 Name राजेन्द्र

Father's name रघु कुम्हार

Residence साकिन- खोरी खुर्द, थाना- फरला खुर्द, जिला- शहडोल (म.प्र.) Age 22 वर्ष

Sentenced आजन्म कारावास on 8.7.1992

Under section 302 I.P.C by न्यायालय, अपर सत्र न्यायाधीश शहडोल नगर जिला- शहडोल (म.प्र.) S.T. No- 169/90

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appeliate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement 8-7-1992

2 Date of which copy received 8.8.1992

3 Date on which Appeal sent 8-8-1992

4 whether the prisoner wishes to be represented or not – Yes / No.

No. 5216 Name राजेन्द्र पि० रघु कुम्हार

Continued in CENTRAL Jail REWA (M.P.)

No. 451/ octagam/92 Dated 8.9.92 198

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ अतिरिक्त पंजीयक महोदय माननीय उच्च न्यायालय म०प्र० जबलपुर to gather which a copy of order passed in the case for favour of transmission to the proper Appellate Court.

8/9/92

अधीक्षक
केन्द्रीय जेल, रीवा (म. प्र.)

Superintendent

Date of receipt in C. J. M.'s office

Date of receipt record to accompany

Memo of Appeal of the Appeliate court

No Dated 198

Forwarded to the

C. J. Magistrate

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक C.A. 1038/92 सन् ~~290~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

6-1-2006

Mrs. Savita Tiwari, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. Alok Bakshi, Govt. Advocate for the State/respondent.

Oral judgment.

By this criminal appeal through the Superintendent, Central Jail, Raipur, accused/appellant Gajendra has questioned the legality of the judgment of conviction and order of sentence dated 8th July, 1992, passed by the Additional Sessions Judge, Jashpurnagar, District: Raigarh, in Sessions Trial No.119/90, whereby learned Additional Sessions Judge after holding accused Balram and accused/appellant Gajendra guilty for the commission of offence under Section 302 of the I.P.C. sentenced each of them to undergo imprisonment for life.

The prosecution case, in brief, necessary for the disposal of this appeal is that Sukhalram (PW-11) Kotwar lodged the report Ex.P-10 in Police Station: Farsabahar on 22-6-1990 to the effect that on 21-6-1990 at about 8 p.m. he returned to his house, thereafter he was taking rest, at about 10 p.m. when he was sitting after taking dinner he heard the voice of Fagnuram saying "मादरचोद निकलो आज मारूँगा", at that time wife of Fagnuram along with her children came to his residence and informed that Balram & Gajendra are attacking her husband. On hearing this, he went to the house of Balram and saw that in the courtyard the body of Fagnuram was lying, Balram &

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मामला क्रमांक G.A. 1038/92 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Gajendra murdered Fagnuram with axe and iron rod. Blood was oozing out of the head of Fagnuram and thereafter, he informed the villagers.

On receiving this report, the Station House Officer registered Crime No.52/90 under Section 302 read with Section 34 of the I.P.C. and proceeded to the scene of occurrence. He prepared the Panchnama of the body Ex.P-6, after giving notice to the Panchas. Based on the memorandum of Balram Ex.P-1, the axe was recovered at his instance under Ex.P-2 and based on the memorandum of Gajendra Ex.P-3, the iron rod was recovered at his instance under Ex.P-4. He also took into possession plain soil and blood stained soil from the place of occurrence under Ex.P-5. Site plan Ex.P-8 was prepared by the Halka Patwari. The body of Fagnuram was sent for post-mortem examination to the Primary Health Centre, Farsabahar, where Dr. G.S. Paikra (PW-15) conducted post-mortem and opined that the death was caused as a result of comma due to injuries to the brain and the death was homicidal in nature. He also examined the injuries of accused Balram and prepared injury report Ex.P-15, and also examined accused/ appellant Gajendra and prepared injury report Ex.P-16.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Jashpurnagar, who in turn committed the case to the Sessions Judge, Raigarh from where learned Additional Sessions Judge, Jashpurnagar, received the case on transfer for trial.

The prosecution in order to establish charge against the accused persons examined 15 witnesses. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

prosecution evidence and stated that they are innocent and they have been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing Additional Public Prosecutor and counsel for the accused persons convicted and sentenced each of the accused as mentioned in para 1 of the judgment.

We have heard Mrs. Savita Tiwari, learned counsel for the accused/ appellant and Mr. U.N.S. Deo, learned Additional Public Prosecutor with Mr. Alok Bakshi, learned Govt. Advocate for the State/respondent.

Learned counsel for the appellant did not dispute the fact of homicidal nature of the death of Fagnuram. Apart from that, from the evidence of Dr. G.S. Paikra (PW-15), Sukhalram (PW-11) & Atishila (PW-12), wife of the deceased, it is established that the death of Fagnuram was homicidal in nature.

Now, coming to the involvement of the accused/appellant in committing the murder of his own brother Fagnuram, learned counsel for the accused/appellant did not challenge the involvement of the accused in the crime in question. However, she argued that the deceased and the accused persons were real brothers and there was a dispute regarding land, which was being cultivated by the accused persons. Deceased Fagnuram, on the fateful day, started abusing Balram & Gajendra, the accused persons, attacked them and they received injuries. Fagnuram came to the house of accused Balram started abusing and attacked them, therefore, in the right of private defence, they assaulted the deceased. Hence, this is a clear case of

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 4 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

exceeding the right of private defence, as such the offence against the accused/appellant does not travel beyond Section 304 Part-II of the I.P.C.

On the other hand, learned Additional Public Prosecutor and learned Govt. Advocate supported the judgment of the trial Court.

As far as the involvement of the accused/appellant in the crime in question, Atishila (PW-12), wife of the deceased, has stated in her evidence that accused/appellant Gajendra and accused Balram assaulted her husband with axe and iron rod. In cross-examination she has stated that her husband was claiming the land of Budhiyari Bai as she was issueless. She has further stated in her cross-examination that she has not seen any injury on the bodies of the accused persons and it is incorrect to say that she along with Fagnuram went to assault the accused persons. Tarsilabai (PW-13) has also stated in her evidence that at the relevant time, she was Sarpanch of the village, the accused persons came to her house and informed her that as Fagnuram came to their house and started quarrelling with them, therefore, they have murdered him. In view of the evidence of Atishila (PW-12) and the extra judicial confession made by the accused persons before Tarsilabai (PW-13), the involvement of the accused/appellant in the crime in question is established.

As far as the argument of learned counsel for the appellant that the case of the accused/appellant is covered under Exception 2 to Section 300 of the I.P.C. is concerned, even though Atishila (PW-12) has stated in her evidence that she had not seen injuries on the bodies of the accused persons, but Dr. G.S. Paikra (PW-15) examined accused Balram & accused/ appellant Gajendra, and noticed injuries on their bodies. He prepared injury

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मामला क्रमांक G.A. 1038/12 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

reports Ex.P-15 & P-16 in respect of the injuries of Balram & Gajendra. From the evidence of Sukhalram (PW-11) and the first information report Ex.P-10 lodged by him, it is clear that on the fateful night, deceased Fagnuram was abusing and saying that he will kill, thereafter, he went to the house of accused Balram. As per the site plan, the incident took place in the house of Balram, where the dead body of Fagnuram was seen by PW-10. Therefore, it is established that deceased Fagnuram went to the house of Balram, started fighting and quarreling with Balram & Gajendra, and in that fight the accused persons received injuries those have not been explained by the prosecution. From the above evidence, it is established that the accused persons assaulted the deceased in the right of private defence.

However, the manner in which the accused assaulted and caused injuries, as many as nine injuries have been caused with axe and iron rod as a result of which deceased Fagnuram received, incised wound on the left eye brow in the size of 3" x ½", lacerated wound behind the left ear, lacerated wound on the jaw, lacerated wound on the left eye, lacerated wound on the right side of the jaw, incised wound on the right zeugmatic area and on the left parietal region. Therefore, as many as nine injuries were caused with axe & iron rod on the vital parts of the body of the deceased, as a result of which there was a depressed fracture on the left parietal bone on the forehead which shows that all these injuries were caused with the lethal weapon on the vital organ of the body with the intention to cause the murder of Fagnuram. However, as has been mentioned above, Fagnuram himself went to the house of Balram started abusing and challenging him, and assaulted Balram & Gajendra, therefore, these accused persons attacked the deceased, but they had exceeded their right of private defence.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 6 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंन्तिम आदेश
	In the circumstances, the case is covered under Exception 2 to Section 300 of the I.P.C., as such, offence under Section 304 Part-I of the I.P.C. is made out against the accused/ appellant. Hence, the conviction of the accused/appellant under Section 302 of the I.P.C. cannot be sustained. In the result, the appeal is partly allowed. Conviction and sentence awarded to the accused/appellant under Section 302 of the I.P.C. are set aside, instead thereof, the accused/appellant is convicted under Section 304 Part-I of the I.P.C. and sentenced to undergo imprisonment for ten years. The accused was in custody during trial from 23-6-1991 to 24-1-2003 which has not been disputed by learned Additional Public Prosecutor, thereby he has already served out the sentence. As the accused/appellant is on bail, therefore, he need not to be surrendered and his bail bonds are discharged. Sd/- L.C.BHADOO Judge	Sd/- Dhirendra Mishra Judge
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